commodore
international limited

Executive Offices
1200 Wilson Drive
West Chester, PA 19380
(215) 431-9100

M E M O R A N D U M

TO: See Below

FROM: Joseph C. Benedetti

DATE: May 9, 1985

RE: Responsibilities and Liabilities Under Federal Securities Laws

Enclosed is a copy of a memorandum regarding the above subject. Please redistribute copies of this memorandum to all of your managing, supervisory and other key employees. Thereafter, would you kindly confirm to me that this distribution has been made and send me a copy of the distribution list.

Should you have any questions, please do not hesitate to contact me.

JCB:gd

Attachment

To:

A. Ahlbom
P. Barber
J. Bauer
T. Beggs
D. Bertram
K. Black
R. Bowie
G. Bucas
R. Cadmus
J. Campbell
W. Campbell
R. Caramanica
J. Chlan
A. Chowaniec
B. Davies
J. Dionne
T. Dow
T. Ellis
B. Evans
B. Feldman
J. Forte
A. Gaudio
G. Gebhart
R. Geiger
P. Goheen
R. Goldstein
M. Grauel
D. Greenbaum
S. Guzzon
C. Ha
J. Haigh
M. Harkins
E. Havlik
A. Herrington
C. Hnatin
D. Hunt
R. Janick
L. Kachelries
H. Kalman
J. Kelly
R. Kenney
J. Krasucki
P. Lazovick
F. Leonardi
J. Mathias
T. Matson
J. Mecca
D. McAlonan
H. McCabe
J. Miner
D. Morse
B. Mortenson
B. Murray
R. Olah
M. Olivia
D. O'Malley
R. Pariseau
J. Posta
P. Preuhs
M. Przybylski
T. Rattigan
R. Recla
P. Reikard
D. Reisinger
T. Rizol, Jr.
T. Rizol, Sr.
H. Rodman
W. Rothenbach
T. Saylor
R. Shindelholz
C. Smith
D. Smyk
D. Sparks
F. Szczepanski
J. Temple
R. Trukenbrod
H. Turner
J. VanHorn
G. Vellis
F. Walker
P. Walkington
S. Wickham
J. Winters
L. Wolfe
K. Yeh
T. Zaboroski

cc: I. Gould
M. F. Smith

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M E M O R A N D U M

TO: Key Employees, Officers and Directors of Commodore International Limited and Its Subsidiaries

FROM: Joseph C. Benedetti, Vice President and General Counsel

DATE: May 9, 1985

RE: Responsibilities and Liabilities Under Federal Securities Laws

The within memorandum briefly summarizes responsibilities and liabilities under U.S. federal securities laws with which you should be familiar. The U.S. Securities Exchange Commission ("SEC") has jurisdiction over enforcement of the U.S. federal securities laws. Your Commodore activities, vis a vis Commodore's securities, are governed by these laws regardless of your nationality or domicile.

Because of the complexities of these laws and the serious consequences of a failure to adhere to the same, you are urged to seek the advice of legal counsel before you engage in any transaction or activity which may be governed by these laws.

I. Liabilities for the Misuse of Inside Information and Material Misstatements or Omissions

(a) Inside Information.

Transactions in a company's securities by an "insider" or his "tippee" based upon "material" company information which has not been publicly disclosed may subject the "insider" to private lawsuits and/or SEC civil and criminal proceedings.

An "insider" is any director, officer, employee, representative or consultant of a company who acquires "material" inside information about the company which has not been publicly disclosed by the company.

A "tippee" is one to whom an "insider" has selectively disclosed such material inside information.

"Material" company information is considered to be any information concerning the company which could be important to a reasonable investor in decisions regarding the company's securities. Information about any of the following company matters would most likely be considered material:

-- changes in dividend rate or capital structure;

-- changes in operating or financial circumstances, such as cash-flow reductions, liquidity problems, write-offs or labor disputes;

-- changes in customary or previously predicted earnings or earnings trends;

-- stock splits or stock dividends;

-- financings;

-- acquisitions of other companies or dispositions of existing operations;

-- changes in competitive position;

-- tender offers or mergers;

-- new products, discoveries or services;

-- significant litigation.

"Material" information about the company is normally considered as having been made "public" after the information has been disseminated to the general news media via a press release or press conference and/or has appeared in the Dow-Jones broad tape or in the financial press.

Accordingly, until the lapse of a reasonable time after there has been adequate disclosure to the public of "material" information relating to the company, any director, officer, employee, representative or consultant of the company who has knowledge of such "material" information should not buy or sell the company's securities (or puts, calls, options or other rights to buy or sell such securities) or disclose or "tip" the "material" information to others ("tippee") who might buy or sell such securities.

(b) Material Misstatements or Omissions.

In addition to liabilities imposed on "insiders" for trading or "tipping," the federal securities laws impose liabilities on directors and officers who furnish (or who knowingly, or in certain cases negligently, allow others to furnish) information that is untrue, incomplete or misleading in a material respect to persons buying or selling securities of the company.

These liabilities apply with respect to material misstatements or omissions made to the public generally or as may be disclosed in any reports filed with the SEC including registration statements, annual or quarterly reports to stockholders, in communications relating to a stockholder's meeting, tender offers, mergers or other acquisitions, or in a press release or similar public announcement. In some instances there are also the risks of SEC civil and criminal proceedings.

Accordingly, it is incumbent upon each officer and director of the company to exercise due diligence to assure that all such company reports and announcements issued under the signature of such officer or director not contain any material misstatement or omission.

Furthermore, it is incumbent upon all officers, directors, employees, representatives and consultants of the company to refrain from making statements or announcements to the public, the press or investors regarding material company information except through a company officer or spokesman who has been previously authorized by the President of the company to make public such material information.

II. Liability for "Short-Swing" Profits.

Section 16(b) of the Securities Exchange Act of 1934 provides that any profit by an officer or director or the holder of more than 10% of the company's stock realized from any purchase and sale, or sale and purchase, of any of the company's common stock (or any other equity security of the company) within a period of less than six months must be paid to the company, and if the company fails to bring suit to recover such profit any stockholder may sue on its behalf to recover it. This is the so-called "Short-Swing Profit."

Section 16(b) establishes an absolute standard of liability. A person's good faith or lack of intention or the absence of inside information are all irrelevant. The only requirement is that the person will be liable if he/she realizes a profit. Thus, it is no defense that the person

did not understand that the transaction would be deemed a "purchase" or "sale" or did not understand that a transaction by another could be attributed to him. Nor may the company waive the violation, permit rescission of a transaction with it or settle for less than the entire "profit" realized.

Liability under Section 16(b) will be imposed with respect to purchases and sales by an officer or director within six months if the person held his position as an officer or director at either the time of purchase or the time of sale. On the other hand, the liability of a more-than-10% stockholder for "short-swing" profit is conditional upon his being a more-than-10% stockholder at the time of both the puchase and the sale. Thus, the purchase as a result of which a stockholder becomes a more-than-10% holder cannot be matched with sales made after he became a more-than-10% holder. Conversely, a stockholder owning more than 10% and selling down to 10% can be liable for such sales if appropriately matched with a purchase within six months, but no liability is incurred, however, with respect to sales which occur after he has reduced his holdings to 10% or less.

Judicial decisions have broadly interpreted the terms "purchase" and "sale" and, as a result, many transactions which might not ordinarily be thought of as a purchase or sale may be subject to the provisions of Section 16(b). For example, a merger might be deemed the sale or purchase of the securities of the merging companies (depending on the voluntary nature of the exchange of shares by the stockholders or the respective companies).

In addition, for purposes of Section 16(b), the term "purchase" includes the acquisition of stock upon exercise of a stock option or stock appreciation right. Accordingly, if a person subject to Section 16(b) exercises any such options or rights and sells any shares of the company's stock within six months before or after such exercise, he will be liable for any "short-swing" profit realized. Special rules exempt individuals granted options from liability with respect to certain transactions involving options or rights. Rule 16b-3 exempts the grant of a stock option from the operation of Section 16(b) if the option is granted pursuant to a stock option plan which satisfies the conditions of the Rule.

Liability under Section 16(b) cannot be avoided by holding one securities certificate and selling another or by any other approach designed to establish that particular securities were held for the requisite six-month period -- all of the company's stock of the same class is "fungible" for purposes of Section 16(b). The rule is applied as follows: Each sale and purchase, or purchase and sale, within a period of less than six months is matched, usually

in such fashion as to permit recovery by the company of the greatest profit, regardless of the order in which the transactions occur or whether there was in fact a net profit on the total of the transactions. The courts have formulated the rule "lowest price in, highest price out -- within six months." For example, if an officer held 500 shares of the company's stock for many years and sold them in January at a profit, at that point there is no "short-swing" profit recoverable by the company. However, if the officer then purchased 500 shares of the company's stock in March at a lower price than that at which he sold the 500 shares in January, the March purchase is related back to and matched with the January sale, even though the sale ocurred first. The difference between the price paid for the shares purchased in March and the price received for the shares sold in January would be considered a "profit" that must be paid to the company. Furthermore, there may be circumstances under which the acquisition or sale of options or warrants to purchase, or securities convertible into, the company's common stock may be matched with purchases or sales of the underlying stock for the purpose of Section 16(b), especially when the facts indicate that the acquisition or sale of the option, warrant or convertible security is really the acquisition or sale of the underlying stock.

III. Section 16 Reporting Responsibilities -- Form 3 and Form 4

Section 16(a) of the Securities Exchange Act of 1934 requires that every officer and director or person who becomes a more-than-10% stockholder of a reporting company (a) must file an initial report on Form 3 of his beneficial ownership of the company's securities within 10 days after his first election as an officer or director or his acquisition of more than 10% of the outstanding stock and (b) to report on Form 4 any subsequent change in beneficial ownership by filing a report within 10 days after the end of each month in which any change in beneficial ownership has occurred.

The regulations provide that for the purposes of the reports an "officer" is a president, vice president, treasurer, secretary or comptroller of the issuing company, or one who performs services comparable to the services performed by those officers.

All transactions resulting in changes in beneficial ownership in the company's securities must be reported on Form 4 even though the transaction was not a purchase or sale (e.g., receipt of shares by stock dividend or by a gift, or the making of a gift of shares) or the change involved only a

change in the form of ownership (e.g., a distribution of shares from a trust of which the individual is a beneficiary which are deemed beneficially owned indirectly, to the individual's direct ownership). A report must be filed to show all transactions even where the net balance of shares owned is the same at the end of the month as it was at thebeginning (e.g., where purchases and sales during the month were equal).

Should there be a change in a person's beneficial ownership of the company's securities within six months after his election as a director or officer, he must include in the first Form 4 he files not only information with respect to that change but also information with respect to any other transaction by him in the company's securities which took place within six months prior to the date of that change, even though such transactions occurred before he became a director or officer. Should a person cease to be a director or officer of the company, he is required to continue to file Form 4 reports with respect to changes in his beneficial ownership of securities which occur within six months after his last transaction in the company's securities prior to the date he ceased to be a director or an officer.

The Form 3 and Form 4 reports must also include information with respect to puts, calls, options or other presently exercisable rights or obligations to buy or sell the company's securities, other than stock options and stock appreciation rights which meet specified requirements.

Counsel should be consulted regarding any questions which arise in the preparation of reports.

Because claims for "short-swing" profits under Section 16(b) may result from disclosures made in reports filed under Section 16(a), it would be advisable for any person who is required to file reports to refrain from making purchases or sales which might be matched with purchases or sales within a six-month period by his spouse or other person whose shares are included in his report. Purchases and sales by the spouse or such other person within a six-month period should also be avoided.

The SEC has never specifically defined the term "beneficial ownership" for purposes of Section 16(a) of the Securities Exchange Act of 1934 and the filing of Form 3 and Form 4. However, some of the generally accepted indicia of beneficial ownership include: (1) the right to vote or control the voting of the securities; (2) the right to transfer the securities or control their transfer; (3) the right to receive income from the securities or control the disposition of such income; and (4) the right to receive or

control the disposition of the proceeds in litigation. Examples of "beneficial ownership" of securities are as follows:

(a) Securities held by the individual of record for his or her own benefit.

(b) Securities held in the name of a broker or other nominee for the individual's benefit (which is considered as "direct" ownership).

(c) Securities with respect to which the individual has the right (pursuant to any contract, understanding, relationship, agreement or other arrangement) to receive or enjoy benefits substantially equivalent to those of ownership, such as dividends and voting rights, or to vest or request title in himself or herself at once or at some future time.

(d) Securities held by closely held corporations or partnerships in which the individual has an interest or by estates of which the individual is a beneficiary.

(e) Securities held in the name of the individual's spouse or minor children, or by any relative who lives with him or her, unless there are special circumstances, such as divorce or separation, or other "countervailing facts." While the SEC regards such securities as beneficially owned by the individual and requires that they be included in his or her Forms 3 and 4, the individual may nevertheless disclaim beneficial ownership of the securities by including the information as to them in a footnote. Such a disclaimer does not, of course, resolve the legal question of beneficial ownership or eliminate the risk of liability of the indicia of ownership described above remains.

IV. Other Liabilities and Responsibilities.

(a) Short Sales. Under Section 16(c) of the Securities Exchange Act of 1934, it is unlawful, with limited exceptions, for a director, officer or more-than-10% stockholder of a reporting company to sell any of the company's equity securities if he does not own the security sold (i.e., it is unlawful to make a "short sale") or, if he does own the security and sells it, to fail to make delivery within 20 days after sale or to deposit the security in the mails within five days after sale.

(b) Rule 144 Sales. Under the Securities Act of 1933 persons in a control relationship to the company are prohibited from making public sales (including sales on a

stock exchange or in the over-the-counter market) of the company's securities in the absence of an effective registration statement under that Act covering the securities to be sold. The term "control relationship" means a person directly or indirectly controlling, controlled by or under common control with an issuer of securities. Such persons are called "affiliates" in Rule 144 under the Securities Act of 1933, which provides a limited exemption for certain sales by affiliates. All directors and executive officers, as well as stockholders who own a sufficient number of shares to be able to influence corporate affairs, are generally considered by the SEC to be affiliates.

The act also prohibits, in the absence of registration, public sales of a company's securities that have been acquired from the issuing company or from an affiliate of the issuer in a non-public transaction or so-called "private placement" (these securities at one time were referred to as "investment" or "letter" stock but are now called "restricted securities"). Rule 144 also provides a limited exemption for certain sales of restricted securities acquired pursuant to such transactions.

Securities may be sold under Rule 144 only if, at the time of the sale, adequate current public information about the issuer of the securities is available. For an issuer whose securities are listed on an exchange or that has otherwise been subject to the reporting requirements of the Securities Exchange Act of 1934 for at least 90 days immediately preceding the sale, this condition will be met if the issuer has filed all reports on Forms 8-K, 10-Q, 10-K or 20-F required to be filed during the 12 months preceding the sale or for any shorter period that the issuer was required to file reports.

In view of the intricacies of the various laws and rules applicable to the sale of securities by officers, directors or principal stockholders of a reporting company and the necessity for the filing of Form 144 and the delivery of legal opinions and other papers in connection with any proposed sale, it is recommended that counsel be consulted in advance of any such proposed transaction in a reporting company's securities.

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